

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Clear Channel Broadcasting Licenses, Inc.)	File No. EB-02-BF-190
Owner of Antenna Structure # 1002978)	NAL/Acct. No. 200332280003
Utica, New York)	FRN: 0001 6758 18

FORFEITURE ORDER

Adopted: April 30, 2004

Released: May 4, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”), licensee of Station WOUR(FM) and owner of antenna structure # 1002978 (“antenna structure”), Utica, New York, for willful and repeated violation of the antenna structure painting requirements of Section 303(q) of the Communications Act of 1934, as amended (the “Act”),¹ and Section 17.50 of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. On July 16, 2002, the Commission’s Buffalo, New York Office (“Buffalo Office”) inspected Clear Channel’s antenna structure, and observed that the structure’s visibility was impaired because its painting was chipped and faded. As a result of the inspection, the Buffalo Office released a Notice of Violation (“NOV”) to Clear Channel on July 29, 2002, and a corrected NOV to Clear Channel on August 12, 2002.³ On August 23, 2002, Clear Channel responded to the NOVs, by stating that it contracted to repaint the antenna structure on August 31, 2002.⁴

3. On November 7, 2002, the Buffalo Office released a *Notice of Apparent Liability for Forfeiture* (“NAL”).⁵ The NAL found that Clear Channel willfully and repeatedly violated Section 17.50

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. § 17.50.

³ Official Notice of Violation from Gene J. Stanbro, Resident Agent, Federal Communications Commission, to Clear Channel Broadcasting (August 12, 2002) (correcting the antenna structure’s registration number); Official Notice of Violation from Gene J. Stanbro, Resident Agent to Clear Channel Broadcasting (July 29, 2002) (notifying Clear Channel that its antenna structure did not comply with Section 17.50, which requires that it “be cleaned or repainted as often as necessary to maintain good visible [sic]”).

⁴ See Letter from Christopher L. Robbins, Esq., Wiley Rein & Fielding LLP, to Gene Stanbro, Resident Agent, Federal Communications Commission (August 23, 2002).

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332280003 (Enf. Bur. Buffalo Office, November 7, 2002).

of the Rules and proposed a \$10,000 forfeiture.

4. Clear Channel responded to the *NAL* on December 9, 2002.⁶ In its response, Clear Channel does not dispute the *NAL* findings. Nevertheless, as detailed below, Clear Channel seeks cancellation or reduction of the forfeiture, based on the fact that the Buffalo Office allegedly erred in inspecting the antenna structure, and that Clear Channel instituted prompt remedial action.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ In examining Clear Channel's response, Section 503(b) of the Act requires us to take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

6. Clear Channel claimed that the Buffalo Office agent's "routine," "drive-by" inspection of the antenna structure "should not have taken place," given the Agreement between the New York State Broadcasters Association ("NYSBA") and the Commission¹¹ entered into pursuant to the agency's Alternative Broadcast Inspection Program ("ABIP"). Specifically, Clear Channel claimed that under the Agreement, the Commission agreed to abort an inspection if demonstrated that the station had requested and paid for an alternative NYSBA inspection. In support, Clear Channel provided a copy of the Alternative Inspection Agreement,¹² and a copy of its request for the alternative NYSBA inspection that preceded the Buffalo Office's inspection.¹³

7. The Commission's ABIP, established in 1996, is a voluntary program designed to facilitate licensee compliance with the requirements of the Act and the Rules and reduce administrative burdens. Under the ABIP, an entity, typically a state broadcast association, conducts an inspection of a licensee's station at the licensee's request.¹⁴ If the station passes the voluntary inspection, the Commission's

⁶ See Letter from Christopher L. Robbins, Esq., Wiley Rein & Fielding LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (December 9, 2002) ("Response").

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ Response at 1-2.

¹² See Attachment to Response ("Alternative Broadcast Inspection Program, A Cooperative Program of the New York State Broadcasters Association and the FCC," effective November 15, 1996).

¹³ See Attachment to Response ("Request for Performance of NYSBA Inspection," submitted by "WOUR Clear Channel, Utica, New York, dated April 1, 2002).

¹⁴ The applicable Alternative Inspection Agreement provides that the Buffalo Office shall terminate a routine inspection "upon a showing by the Station that either (i) an NYSBA "Alternative Inspection Program" *has been* (continued....)

appropriate Field Office receives a notification, and does not subject the station to routine inspections for a specified period.

8. Clear Channel's claims notwithstanding, the Buffalo Office's 2002 inspection of Station WOUR(FM) was not precluded under the Commission's ABIP. The Buffalo Office's inspection was part of its field-wide targeted tower safety program, and as such, was not routine under the ABIP. According to the explicit terms of the Agreement between the Commission and the NYSBA, a station is not exempt from Field Office inspections based on the agency's targeted compliance program, during the three year period following such station's passing of the alternative inspection.¹⁵ Thus, consistent with the outlines of the Commission's ABIP,¹⁶ the provisions of the Commission's Agreement with NYSBA, as well as recent Bureau precedent,¹⁷ we do not find that Clear Channel's ABIP claim presents a mitigating factor that warrants cancellation or reduction of the assessed forfeiture.¹⁸

9. Clear Channel also claimed that after it received the *NAL*, it repainted the antenna structure. With respect to Clear Channel's remedial effort, it is a long-established Commission policy that such an effort implemented after Commission notice of or action on a violation, while commendable, does not lessen, mitigate or excuse a past violation and thus does not present a factor that warrants cancellation or reduction of the assessed forfeiture.¹⁹

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ Clear Channel Broadcasting Licenses, Inc. **IS LIABLE FOR**

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requested, or (ii) an NYSBA "Alternative Inspection Program" has been conducted within the last ninety (90) days and the Station is attempting to correct any non-compliance [emphasis added]." See note 12, *supra*. In the instant case, Clear Channel demonstrated that it made the request for an alternative inspection on April 1, 2002, prior to the Buffalo Office's July 16, 2002, inspection. See note 13, *supra*. However, as discussed herein, irrespective of Clear Channel's request, because the Buffalo Office's inspection was not routine, it was not precluded by the above provision of the Alternative Inspection Agreement.

¹⁵ See note 11 and accompanying text, *supra*.

¹⁶ See notes 13-14 and accompanying text, *supra*.

¹⁷ See e.g., *State Broadcasting Corp.*, DA 04-692 at ¶ 7 (Enf. Bur. March 16, 2004) (finding that the station had requested but had not been certified under the voluntary inspection program, and that even if the station had been certified, it would not have been exempt from the Field Office's targeted tower safety compliance program inspection); *Cumulus Licensing Corp.*, 18 FCC Rcd 21234, 21236 ¶ 10 (Enf. Bur. 2003) (finding that a certificate of compliance under the voluntary inspection program did not shelter a station from the Field Office's targeted tower safety compliance program inspection and the finding of apparent liability).

¹⁸ We note that recently updated ABIP Agreements, including the one with the NYSBA, similarly exclude tower safety inspections.

¹⁹ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 ¶ 14 (2002); *KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); *Max Media of Montana, LLC*, DA 03-3276 ¶ 11 (Enf. Bur. October 21, 2003); *East Tennessee Radio Group, L.P.*, DA 03-868 ¶ 7 (Enf. Bur. March 26, 2003).

²⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for its failure to comply with the antenna structure painting requirements, in willful and repeated violation of Section 73.50 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332280003 and FRN 0001 6758 18. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Christopher L. Robbins, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.